

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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2004 JUN 22 P 12:20

ALBERT HENRY CORLISS,
Plaintiff

v.

**LEVESQUE AUTO SERVICES, INC.,
FALL RIVER POLICE DEPARTMENT, and
DOES 1-10,**
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS.

C.A. # 04-10834-DPW

**MOTION OF THE DEFENDANT,
THE FALL RIVER POLICE DEPARTMENT,
TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

The defendant, the Police Department of the City of Fall River, Massachusetts, moves, pursuant to Fed.R.Civ.P. 12(b)(1), to dismiss the plaintiff's Complaint for lack of subject matter jurisdiction.

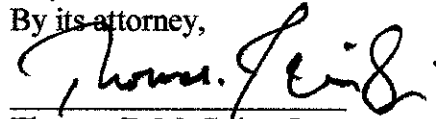
As grounds for this motion, the defendant says that the plaintiff has not alleged any valid basis for federal jurisdiction. The plaintiff's complaint seeks recovery for the tort of conversion, *i.e.* the allegedly unlawful towing of a motor vehicle valued at \$ 1,500.00. The plaintiff alleges this court has jurisdiction of this state law claim because he is an Indian and the vehicle was towed from an Indian Reservation. The plaintiff contends: "The United States District Court of Massachusetts has jurisdiction over all local Indian matters." Complaint, Section I. That is incorrect. "Although the federal government has long had a special relation to the American Indian, there is no jurisdiction in the federal courts to hear a case merely because an Indian or an Indian tribe is a party to it." Wright and Miller, 13B Fed. Prac. & Proc., sec. 3579.

The federal courts do have jurisdiction over claims "brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." 28 U.S.C.A. s. 1362. However, that grant of jurisdiction is inapplicable here for two reasons. First, this action is brought by an individual Indian, not a federally recognized tribe. Second, the plaintiff does not allege a claim under federal law.

No other basis of federal jurisdiction appears in the plaintiff's complaint. Mr. Corliss does not allege a diversity of citizenship. 28 U.S.C.A. s. 1332. To the contrary, Exhibit F to the complaint indicates he is a Massachusetts resident. Likewise, the complaint does not indicate that there is any federal question to be resolved. 28 U.S.C.A. s. 1331.

In the absence of any basis for federal jurisdiction, the claim should be dismissed.

The defendant,
City of Fall River
By its attorney,



Thomas F. McGuire, Jr.
B.B.O. # 335170
Corporation Counsel
Law Department
One Government Center
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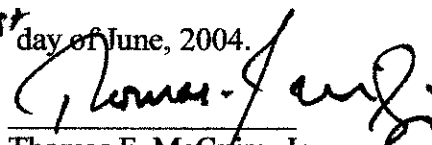
CERTIFICATE OF SERVICE

I hereby certify that I have served the attached document on all parties by mailing
copies thereof to:

Albert Henry Corliss
1514 Beacon Street, Suite 43
Brookline, MA 02446

Levesque's Auto Service, Inc.
771 Rodman Street
Fall River, MA 02721

Signed under the penalties of perjury this 21st day of June, 2004.


Thomas F. McGuire, Jr.